

EXECUTIVE OFFICER SUMMARY REPORT
June 10, 2004

ITEM: 12

SUBJECT: NPDES Permit Reissuance: County of Riverside, City of Murrieta, City of Temecula, and the Riverside Flood Control and Water Conservation District (Permittees); Discharges of Urban Runoff from the Municipal Separate Storm Sewer Systems within the Santa Margarita Watershed. (*Bob Morris/Megan Quigley*)

PURPOSE: To consider adoption of tentative Order No. R9-2004-001 (NPDES Permit No. CAS0108766).

PUBLIC NOTICE: In accordance with 40 CFR § 124.10, public notice of a draft permit shall allow at least 30 days for public comment, and a public notice of a public hearing shall be given at least 30 days before the hearing. The written comment period, public hearing, and release of the tentative Order were publicly noticed on December 15, 2003 (Riverside Press Enterprise and Regional Board web page). The public hearing was conducted on February 11, 2004 and the public comment period was closed on March 10, 2004. Today's meeting, the release of the Response to Comments, and the revisions to the tentative Order were publicly noticed on May 6, 2004 in Riverside Press Enterprise.

DISCUSSION: Tentative Order No. R9-2004-001 will be a third-term Phase I NPDES municipal separate storm sewer system (MS4) permit for the Permittees in the Upper Santa Margarita Watershed. The tentative Order presented in today's agenda contains modifications that are not considered significant and are logically foreseeable in response to comments received on the tentative Order. The changes made to the tentative Order are identified with underline/strike-out text in the revised tentative Order (Supporting Document No. 2).

All comments received are addressed in the Response to Comments document (Supporting Document Nos. 4 and 5). After careful consideration of these comments, the following noteworthy revisions were made to the tentative Order:

1. The required timeframe to modify grading ordinances was increased from 180 days to 365 days (*see Response to Comment No. 97 on page 71 of Supporting Document No. 4*);
2. Two additional findings regarding water quality conditions in the watershed have been added (*see Finding Nos. 10 and 11 in Supporting Document No. 2*);
3. The requirement to require seasonal restrictions on grading was removed (*see Response to Comment No. 103 on page 73 of Supporting Document No. 4*);
4. The required frequency for inspecting construction sites between 1 and 5 acres in size was changed from monthly to at least 3 times during the wet season (*see Response to Comment No. 104 on page 25 of Supporting Document No. 4*);
5. The Residential Program was modified to provide the Permittees with additional flexibility in identifying high priority residential activities (*see Response to Comment No. 41 on page 29 of Supporting Document No. 4*);
6. The definition of Construction Site was modified to eliminate small, non-soil-disturbing activities, such as patio cover installation (*see Response to Comment No. 142 on page 93 of Supporting Document No. 4*); and
7. The monitoring requirements have been reduced to the essential equivalent of the Permittees' proposal (*see table on page 19 of Supporting Document No. 5*).

Several other requests or suggestions for revisions to the tentative Order were considered but were not made for the reasons described in the Response to Comments. These comments included the following:

8. Allow 640 days to develop and implement the SWMP and SUSMP (*see Response to Comment No. 15 on pages 6-10 of Supporting Document No. 4*);
9. Consider removal of Retail Gasoline Outlets as a Priority Development Category subject to SUSMPs (*see Response to Comment 85 on page 65 of Supporting Document No. 4 and pages 43-44 of the revised Fact Sheet*);
10. Municipal site subject to the statewide General Construction and Industrial Permits should be covered under the MS4 permit (*see Response to Comment No. 113 on page 78 of Supporting Document No. 4*);

11. The list of facilities in the Industrial/Commercial Program should be reduced (*see Response to Comment Nos. 115 and 116 on pages 79-82 of Supporting Document No. 4*);
12. The definition of urban runoff is overly broad and should be changed (*see Response to Comment No. 145 on page 94 of Supporting Document No. 4*); and
13. Delete the Special Study to develop numeric criteria to control downstream erosion from the monitoring program (*see Response to Comment No. 32 on page 17 of Supporting Document No. 5*).

At today's meeting, staff will provide a brief summary of the key points of these and other issues and will be available to answer any questions regarding this item.

LEGAL CONCERNS:

1. Richards/Watson/Gershon, on behalf of the City of Temecula, contends that:
 - a. The tentative Order is not supported by relevant evidence. The following decisions are cited:
Aengst v. Bd. Of Medical Quality Assurance (1980) 110 Cal.App.3d275 (The inclusion of "Municipal Storm Water Permitting in California", written by John H. Minan, is unwarranted and without foundation.
People v. Haslouer (1978) Cal.App.3d818, 825.
People v. Morales (1926) 77 Cal.App. 483, 492.
Hercules Powder Co. v. Automatic Sprinkler Corp. of America (1957) 151 Cal.App.2d 387, 400.
 - b. The tentative Order, if adopted by the Regional Board, would be in violation of the Administrative Procedures Act.
 - c. The Regional Board has violated Health and Safety Code Section 57004.
 - d. The federal Regulatory Flexibility Act is applicable to the tentative Order. The cite ***Env't'l Def. Center v. U.S. Env't'l Protection Agency*** (9th Cir. Sept. 15, 2003) No. 00-70014 and No. 00-70734, at 13843-13846.
 - e. The Permittees do not have the legal authority to completely stop storm water runoff which is created by other third parties. They cite ***Carson Harbor Village, Ltd. v. Unocal Corp.***, 287 F.Supp.2d 1118 (C.D. Cal 2003)

2. The Permittees also contend that the terms of the tentative Order are in conflict with the restraints imposed by the legal doctrines of vested rights.

SUPPORTING
DOCUMENTS:

The following documents are contained in today's agenda.

- 1) Map of the Santa Margarita Watershed and Permitted Area.
- 2) Revised Tentative Order No. R9-2004-001 and Monitoring and Reporting Program (MRP). Renewal of Order No. R9-98-02. Released on May 7, 2004.
- 3) Revised Fact Sheet/Technical Report for Tentative Order No. R9-2004-001. A comprehensive document providing legal authority citations and practical justifications of each Tentative Order requirement or section. The document has been revised to reflect changes to the tentative Order and to address comments where necessary. Released on May 7, 2004.
- 4) Response to Comments on Tentative Order No. R9-2004-001. Responses to all significant written and verbal comment received between December 15, 2003 and March 10, 2004. Full comments, unless otherwise noted, are included in the document.
- 5) Response to Comments on the MRP. Responses to all significant written and verbal comments on the MRP as well as responses to the Permittees' proposed revisions to the MRP.
- 6) Public Notices and Notifications. Public Notice of hearing and release of revised tentative Order published in the Riverside Press Enterprise on May 6, 2004. Letters notifying the Permittees and interested parties of the release of the revised tentative Order and Regional Board meeting. Public Notice and Notification of meeting date change.

The following documents had been previously distributed as part of the February 11, 2004 agenda package. If needed, copies of these documents will available at today's meeting or, if requested, will be sent to any Board member as part of the

second mailing.

- 1) Maps of the Santa Margarita Watershed and Permitted Area
- 2) Tentative Order No. R9-2004-001. Renewal of Order No. R9-98-02. Released for public review and comment December 15, 2003.
- 3) Fact Sheet/Technical Report for Tentative Order No. R9-2004-001. A comprehensive document providing legal authority citations and practical justifications of each Tentative Order requirement or section. General information regarding urban runoff and the Tentative Order's requirements is also provided. Released for public review December 15, 2003.
- 4) Written Comments. All written comments received prior to January 28, 2004 from the Permittees and other interested parties, including:
 - a. The Building Industry Association of Southern California
 - b. The City of Temecula
 - c. The Riverside County Flood Control and Water Conservation District
- 5) Public Notice. Public Notice of hearing and public comment period published in the Riverside Press Enterprise on December 20, 2003
- 6) Notification of Release of Tentative Order. Notifications of the release of the tentative Order were mailed to the Permittees and the other parties that expressed interest and that have been interested in previous permit reissuances. The Tentative Order and related documents were also posted on our web page on December 15, 2003.
- 7) Correspondence to the Permittees Regarding the Permit Renewal Process and Inadequacy of Existing Programs. Letters and other information communicated by staff to the Permittees including:
 - a. Notice of Permit Renewal, March 29, 2002
 - b. CWC Section 13267 Request for Information Regarding the Status of Program Implementation, April 17, 2002

- c. Specification for Updating the Storm Water Management Plan for the Permit Renewal, July 19, 2002
 - d. Notice of Violation No. R9-2002-360, November 6, 2002
 - e. Program Evaluation Report, December 11, 2002
- 8) Comparison of MS4 Permits Issued to Riverside County by the Colorado River Basin Regional Board, the Santa Ana Regional Board, and the San Diego Regional Board (including the current and tentative permits). The Regional Board requested this item as a result of the Santa Margarita Watershed Status Report presented to the Board on October 9, 2002.
- 9) Significant Differences Between Order No. R9-2002-0001 (Southern Orange County) and Tentative Order No. R9-2004-001.
- 10) Executive Officer Summary Report dated February 11, 2004.

SIGNIFICANT CHANGES: Differences between current and new requirements are described in Support Document No. 8 of February 11, 2004.

COMPLIANCE RECORD: The Permittees' compliance record is described in the February 11, 2004 Executive Officer Summary Report

RECOMMENDATION: Adoption of Tentative Order No. R9-2004-001.